

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK~~(PROPOSED)~~ SIXTH AMENDED~~(PROPOSED)~~ FIFTH
AMENDED~~FOURTH AMENDED~~~~THIRD AMENDED~~~~SECOND AMENDED~~~~FIRST AMENDED~~CIVIL CASE
MANAGEMENT PLAN
AND SCHEDULING
ORDER-----X
Wenger S.A., :

Plaintiff, :

-v- :

Swisstech IP Co., LLC and Olivet
International, Inc., (Proposed) :Defendants :
-----X

1:20-cv-01107 (LGS)

LORNA G. SCHOFIELD, United States District Judge:

This Civil Case Management Plan is submitted by the parties in accordance with Fed. R. Civ. P. 26(f)(3).

1. All parties [*do not consent*] to conducting all further proceedings before a United States Magistrate Judge, including motions and trial. See 28 U.S.C. § 636(c). The parties are free to withhold consent without adverse substantive consequences. [*If all parties consent, the remaining paragraphs need not be completed.*]
2. The parties [*have*] conferred pursuant to Fed. R. Civ. P. 26(f).
3. This case is governed by one of the following sets of rules, and the parties' proposed dates in this order have been adjusted accordingly.
 - a. An employment case governed by the Initial Discovery Protocols for Employment cases? <https://nysd.uscourts.gov/hon-lorna-g-schofield>.
[Yes _____ / No X _____]
 - b. A case governed by Local Civil Rule 83.10, Plan for Certain § 1983 Cases Against the City of New York? <https://nysd.uscourts.gov/rules>.
[Yes _____ / No X _____]
 - c. A patent case subject to the Local Patent Rules and the Court's Individual Rules? <https://nysd.uscourts.gov/rules> and <https://nysd.uscourts.gov/hon-lorna-g-schofield>
[Yes _____ / No X _____]
 - d. A wage and hour case governed by Initial Discovery Protocols for Fair Labor Standards Act? <https://nysd.uscourts.gov/hon-lorna-g-schofield>.
[Yes _____ / No X _____]

4. Alternative Dispute Resolution/Settlement

- a. Settlement discussions [have] taken place.
- b. Counsel for the parties have discussed an informal exchange of information in aid of early settlement and have agreed to exchange the following:

- c. Counsel for the parties have discussed the use of the following alternate dispute resolution mechanisms for use in this case: (i) a settlement conference before a Magistrate Judge; (ii) participation in the District's Mediation Program; and (iii) retention of a private mediator. Counsel for the parties propose the following alternate dispute resolution mechanism for this case:

Magistrate Judge

- d. Counsel for the parties recommend that the alternate dispute resolution mechanism designated in paragraph 4(c) be employed at the following point in the case (e.g., within the next 60 days; after the deposition of plaintiff is completed (specify date); after the close of fact discovery):

After the close of fact discovery

- e. **The use of any alternative dispute resolution mechanism does not stay or modify any date in this Order.**

5. No additional parties may be joined after 45 days after the commencement of the fact discovery period in paragraph 8(a) without leave of Court.

6. Amended pleadings may be filed without leave of Court until 75 days after the commencement of the fact discovery period in paragraph 8(a).

7. Initial disclosures pursuant to **Fed. R. Civ. P. 26(a)(1)** shall be completed no later than 14 days after the commencement of the fact discovery period in paragraph 8(a). [Within 14 days of the parties' Rule 26(f) conference, absent exceptional circumstances.]

9.6.2022

8. Fact Discovery

~~October 9, 2021~~
~~August 6, 2021~~
~~xxxxxxxxxxxx~~

8.4.2022

- a. All fact discovery shall be completed no later than 120 days following the commencement of the fact discovery period, which shall begin 30 days after the New York State on PAUSE order (due to COVID-19) is lifted for all businesses located in New York City. [A period not to exceed 120 days, unless the Court finds that the case presents unique complexities or other exceptional circumstances.]

12/9/2020

~~xxxxxxxx~~
~~2/9/2021~~

4/5/2021
~~xxxxxxxx~~

- b. Initial requests for production of documents pursuant to **Fed. R. Civ. P. 34** shall be served by 35 days after the commencement of the fact discovery period in paragraph 8(a).
- c. Responsive documents shall be produced by 35 days after service of requests for production of documents. Do the parties anticipate e-discovery?
[Yes X / No _____]
- d. Interrogatories pursuant to **Fed. R. Civ. P. 33** shall be served by 35 days after the commencement of the fact discovery period in paragraph 8(a).
See August 13, 2021 Order (Dkt. No. 80)
- e. Depositions pursuant to **Fed. R. Civ. P. 30, 31** shall be completed by close of fact discovery in paragraph 8(a).
See August 13, 2021 Order (Dkt. No. 80)
- f. Requests to admit pursuant to **Fed. R. Civ. P. 36** shall be served by 85 days after the commencement of the fact discovery period in paragraph 8(a).
See August 13, 2021 Order (Dkt. No. 80)
- g. **Any of the deadlines in paragraphs 8(b) through 8(f) may be extended by the written consent of all parties without application to the Court, provided that all fact discovery is completed by the date set forth in paragraph 8(a).**

9. Expert Discovery [if applicable]

- a. Anticipated types of experts if any:

Survey experts

Damages experts

10/15/22

9.6.2022

~~9/15/2022~~

11.14.2022

~~1/14/2022~~

Expert Reports are due
September 6, 2022.

- b. If you have identified types of experts in question 9(a), all expert discovery shall be completed no later than 45 days from the completion date in paragraph 8(a).
[Within 45 days from the date in paragraph 8(a), i.e., the completion of all fact discovery, absent exceptional circumstances.] Omit if you have not identified types of experts.

9/24/2021

~~9/24/2021~~

1/23/2021

~~9/23/2021~~

9/23/2021

~~5/24/2021~~

- c. If you have identified types of experts in question 9(a), by 30 days before the deadline in paragraph 8(a) [no later than one month before the date in paragraph 8(a), i.e., the completion of all fact discovery] the parties shall meet and confer on a schedule for expert disclosures, including reports, production of underlying documents and depositions, provided that (i) expert report(s) of the party with the burden of proof shall be due before those of the opposing party's expert(s); and (ii) all expert discovery shall be completed by the date set forth in paragraph 9(b).

See August 13, 2021 Order (Dkt. No. 80)

10. This case [is] to be tried to a jury.

11. Counsel for the parties have conferred and their present best estimate of the length of trial is 4 days.

Conclusion of
discovery on the
Expert reports due
October 15, 2022.

12. Other issues to be addressed at the Initial Pretrial Conference, including those set forth in **Fed. R. Civ. P. 26(f)(3)**, are set forth below:

Confidential Protective Order to be submitted to the Court within 30 days.

The period of discovery in paragraph 8(a) shall commence 30 days after the New York State on PAUSE order (due to COVID-19) is lifted for all businesses in New York City.

13. Status Letters and Conferences

- a. By 60 days after the commencement of fact discovery [60 days after the commencement of fact discovery], the parties shall submit a joint status letter, as outlined in Individual Rule IV.A.2.

By July 26, 2022, the parties shall file a joint letter providing dates certain for each remaining deposition and any other outstanding discovery.

- b. By 14 days after the close of fact discovery [14 days after the close of fact discovery], the parties shall submit a joint status letter, as outlined in Individual Rule IV.A.2 and, in the event that they have not already been referred for settlement discussions, shall also advise the Court whether or not they request a referral for settlement discussions as provided in Paragraph 4(c) above.

- c. On 14 days after the close of all discovery [usually 14 days after the close of all discovery], a pre-motion conference will be held for any anticipated dispositive motions, provided:

- i. A party wishing to file a summary judgment or other dispositive motion shall file a pre-motion letter at least two weeks before the conference and in the form provided in the Court's Individual Rule III.A.1. Any party wishing to oppose shall file a responsive letter as provided in the same Individual Rule. The motion will be discussed at the conference.
- ii. If no pre-motion letter is timely filed, this conference will be canceled and the matter placed on the Court's trial-ready calendar. The parties will be notified of the assigned trial-ready date and the filing deadlines for pretrial submissions. The parties are warned that any settlement discussions will not stay pretrial deadlines or the trial date.

This Order may not be modified or the dates herein extended, except as provided in paragraph 8(f) or by further Order of this Court for good cause shown. Any application to modify or extend the dates herein, except as provided in paragraph 8(f), shall be made in a written application in accordance with the Court's Individual Rules and shall be made no less than 2 business days prior to the expiration of the date sought to be extended.

The Clerk of Court is directed to enter the dates under paragraphs 5, 6, 8(a), 9(b)-(c) and 13(a)-(c) into the Court's calendar.

~~April 7, 2021~~

~~January 22, 2021~~

July 26, 2022

~~April 18, 2022~~

~~December 16, 2020~~

SO ORDERED.

Dated: _____

New York, New York



LORNA G. SCHOFIELD

UNITED STATES DISTRICT JUDGE

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